

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4306 of 2006
Date of Decision: 19.12.2006

Kulwant Singh

...Appellant

Versus

Sudhir Sharma & Others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Naresh Kaushal, Advocate, for the appellant.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for mandatory injunction filed by the plaintiff-respondents calling upon the defendant-appellant to deliver the vacant and peaceful possession of the suit property, was decreed.

It is the case of the plaintiffs that shop No. 5 situated at Kaithal-Karnal Road in the premises of Market Committee Pundri was taken on rent by one Rajpal Sharma. He died on 8.1.2001 and after his death, the tenancy rights have been inherited by the plaintiffs. The defendant was alleged to be a licensee under the plaintiff and, therefore, suit for mandatory injunction, was filed.

It has been found by both the Courts below that the defendant has not led any evidence in as much as he has not appeared as his own witness but relied upon certain photocopies of the documents, which have not been proved on record. Thus, the suit was decreed after returning a finding that the licence in favour of the appellant stands revoked and consequently, the plaintiffs were held entitled to the decree for mandatory

injunction.

Learned counsel for the appellant has vehemently argued that the appellant is entitled to lead additional evidence i.e. copies of the plaint filed by the plaintiffs earlier against the Market Committee Annexure A.4, written statement filed by the Market committee Annexure A.5 and the order passed thereon Annexure A.6. However, after going through the said documents, it is apparent that such documents do not advance the case of the appellant in any substantial manner.

Previously the plaintiffs have claimed a decree for permanent injunction against the Market Committee alleging possession of Shri Rajpal Sharma as a tenant and one Shamsher Singh as a licensee of the premises in dispute. In the written statement, it was the stand of the defendant- Market Committee that Naveen, Kulwant Singh and Shamsher Singh are in unauthorised possession of shop Nos. 4, 5 and 6 respectively, against whom ejectment proceedings under the Public Premises Act, are pending in the Court of Collector. The appellant has also made reference to an order passed by the Commissioner, Amabla (Annexure A.7) dated 26.4.2006, whereby the appellants therein have agreed to pay rent @ Rs.1000/- per month of their respective shops in dispute at the Market Committee, Pundri. It is admitted by the learned counsel for the appellant that in appeals pending before the Commissioner arising out of the proceedings under the Public Premises Act, the plaintiffs were not party, though the suit for mandatory injunction was filed in the year 2002. Therefore, the written statement given by the appellant to pay rent unilaterally to the Market Committee will not affect the rights of the plaintiffs in as much as the plaintiffs were not party in such proceedings.

The earlier suit for injunction filed by the plaintiffs against the Market Committee was in respect of challenge of the notice terminating the tenancy of the plaintiffs. The plaintiffs have withdrawn such suit on 22.4.2005. The dispute between Market Committee and the plaintiffs regarding termination of the tenancy is not the subject matter of controversy in the present proceedings, wherein the question is to examine whether the appellant is the licensee or has the right to retain possession of the premises in dispute. As per the pleaded case of the appellant, he is a mechanic inducted in possession by Jangsher Singh, Proprietor of Kaithal Tractors. The appellant has not appeared as a witness nor has produced any document or led any evidence to prove that Jangsher Singh was a tenant of the Market Committee and thus, he has some semblance of right to retain the possession of the premises. In the absence of any evidence on the part of the defendant to prove the tenancy of Jangsher Singh.

Thus, I do not find any patent illegality or irregularity in the judgment and decree passed by the Courts below, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed in limine.

19-12-2006
ds

(HEMANT GUPTA)
JUDGE